

These consolidated proceedings are contests filed by Southern Ohio Coal Company, under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801, et seq., to review six citations issued by the Secretary of Labor, and petitions by the Secretary, under section 110(i) of the Act, for civil penalties for the violations alleged in the six citations.

The basic issue is whether water pumps specified in the citations are "permanent pumps" within the meaning of 30 C.F.R. § 75.1105. If they are permanent pumps, the safety standard requires that they be contained in fireproof housing and that they be air-vented into a return entry of the mine. It is acknowledged that they were not so housed and vented at the time the citations were issued. Other issues raised are:

1. Whether the reference to "permanent pumps" in 30 C.F.R. § 75.1105 is unconstitutionally vague.
2. Whether MSHA's actions with respect to the interpretation and enforcement of 30 C.F.R. § 75.1105 have denied SOCCO due process.
3. Whether the water pump violations, if any, were "significant and substantial" within the meaning of § 104(d) of the Act.

Having considered the evidence and the record as a whole, I find that a preponderance of the substantial, reliable and probative evidence establishes the following:

FINDINGS OF FACT

1. Citation No. 2703324 was issued October 16, 1985, when MSHA Inspector John Paul Phillips observed that the air current used to ventilate a booster pump was not vented directly into the return. The pump was a 20 Horsepower T & T fresh water pump located at the No. 9 stopping inby. The pump was reasonably expected to be in this location at least one year.

2. Citation No. 2703528 was issued January 13, 1986, when Inspector Phillips observed that a gathering pump was not housed in a fireproof enclosure or area with the air current coursed directly into the return. The pump was a 10 Horsepower T & T 250 volt direct current pump located at No. 9 stopping in the track heading of the No. 13 left section. The pump had been in this location about a year and a half!